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Oct 7. 1877

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. 607.

CHESTER A. ARTHUR, COLLECTOR OF THE PORT OF NEW YORK, PLAINTIFF IN ERROR,

vs.

ALPHONSE STEPHANI AND W. G. MOERHING.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.

FILED NOVEMBER 7, 1876.

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1 SOUTHERN DISTRICT OF NEW YORK,
City and County of New York, ss:

John Lenehan, being duly sworn, says that on the 16 day of October, 1876, he served the within writ of error on Hartley & Coleman, esq's, defendant's attorneys, by leaving a copy thereof with the person in charge of the law office of said Hartley & Coleman, attorneys, No. 51 Wall street, in said city.

JOHN LENEHAN.

Sworn to before me this 16 day of October, 1876.

J. H. FITCH,
Notary Public

2 UNITED STATES OF AMERICA, *ss:*

The President of the United States to the judges of the circuit court o the United States for the southern district of New York, greeting:

Because in the records and proceedings, and also in the rendition of the judgment of a plea which is in the said circuit court before you, between Alphonse Stephani and William G. Moerhing and Chester A. Arthur, defendant, a manifest error hath happened, to the great damage of the said Chester A. Arthur, defendant, as by his complaint appears, we, being willing that the error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you may have the same at Washington, on the third Monday of October term, eighteen hundred and seventy-six, in the said Supreme Court to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done thereon to correct that error what of right and according to the laws and customs of the United States should be done.

Witness the honorable Morrison R. Waite, Chief Justice of the said Supreme Court, the eleventh day of October, in the year of our Lord one thousand eight hundred and seventy-six.

[SEAL.] JOHN I. DAVENPORT,
Clerk.

The foregoing writ is hereby allowed.

ALEX. S. JOHNSON,
Cir. J.

3 (Indorsed:) U. S. Supreme Court. Chester A. Arthur, plaintiffs in error, against Alphonse Stephani & al., defendant' in error. Writ of error. Filed Oct. 17, 1876.

UNITED STATES OF AMERICA,
Southern District of New York, ss.

I John I. Davenport, clerk of the circuit court of the United States of America for the southern district of New York, in the second circuit, by virtue of the foregoing writ of error, and in obedience thereto, do hereby certify that the following pages, numbered four to seventeen inclusive, contain a true and complete transcript of the record and proceedings had in said court in the case of Alphonze Stephani and Will-

iam G. Mohbring, defendants in error, against Chester A. Arthur, plaintiff in error, as the same remain of record and on file in said office.

In testimony whereof I have caused the seal of the said court to be hereunto affixed at the city of New York, in the southern district of New York, in the second circuit, this sixth day of November, in the year of our Lord one thousand eight hundred and seventy-six, and of the Independence of the said United States the one hundred and first.

[SEAL.] JOHN I. DAVENPORT,
Clerk.

4 U. S. circuit court for the southern district of New York, in the second circuit.

Pleas before the judges of the circuit court of the United States of America for the southern district of New York, in the second circuit, at the United States court buildings in the city of New York, of the term of April, 1876, to wit, of the 7th day of October, in the year of our Lord one thousand eight hundred and seventy-six.

Witness the honorable Alexander S. Johnson, one of the judges of the said circuit court.

JOHN I. DAVENPORT, *Clerk.*

SOUTHERN DISTRICT OF NEW YORK, *ss:*

Be it remembered that heretofore, to wit, on the 2nd day of June, 1874, in April term, A. D. 1874, before the judges of the circuit court of the United States of America for the southern district of New York, in the second circuit, at the United States court buildings, in the city of New York, came Alphonse Stephani et al., by Hartley & Coleman, their attorney', and brought into the said court, before the aforesaid judges thereof, then there, their certain declaration against Chester A. Arthur, defendant, being in custody, &c., of a plea of trespass on the case upon promises; which said declaration follows in these words, that is to say:

5 THE UNITED STATES OF AMERICA:

Circuit court of the United States for the southern district of New York, in the second circuit, of the April term, in the year one thousand eight hundred & seventy-four.

ALPHONSE STEPHANI, WILLIAM S. MOLHRING,
vs.
CHESTER A. ARTHUR.

Alphonse Stephani & William G. Moehring, plaintiffs in this suit, come into court, and, by Hartley & Coleman, their attorneys, give the court now here to be informed that heretofore, to wit, on the 12th day of February last past, this action was commenced in the supreme court of the city and county of New York, according to the laws of the State of New York, and the rules and practice of said court, in favor of said plaintiffs against the defendant herein, upon the causes of action hereinafter set forth, and the summons therein filed with the clerk of said court.

That the defendant afterwards, by his attorney, George Bliss, esquire, duly appeared in said action, and thereupon, on the 23rd day of May, in the year one thousand eight hundred and seventy-four, the said
6 action was duly removed by writ of certiorari for further prosecu

tion into this court, according to the act of Congress in such case made and provided.

And the clerk of the said supreme court did thereupon return the said writ with the said summons, and duly filed the same in this court, which allegations the defendant admits to be true.

Wherefore, let the further proceedings and trial in this action be continued in this court, and the said plaintiffs, who are partners under the firm-name of A. Stephani & Company, by their said attorneys, complain of said defendant of a plea of trespass on the case for promises, for that whereas said defendant, on the 12th day of February, eighteen hundred and seventy-four, at New York City, in the district aforesaid, was indebted to said plaintiffs in the sum of one hundred and eighty-one and $\frac{45}{100}$ dollars, lawful money of the United States of America, for duties on merchandise, to wit, chocolate and arrowroot flour, imported into and entered at the collection district of the United States for the city of

7 New York, on or about the 4th day of October & 30th day of December, in the year one thousand and seventy-three, in the following vessels, to wit: Calabria, from Liverpool, & Sir R. Peel, from London, unlawfully demanded, exacted, and received, at said New York City by the said defendant, then collector of the customs for said district, under color of a law of the United States, for the collection of duties on imports, and paid by the said plaintiffs under protest on appeal in writing in due form of law.

And being so indebted, he, the said defendant, in consideration thereof, afterwards, to wit, on the same day and year last aforesaid, at the place aforesaid, undertook and then and there faithfully promised the said plaintiffs well and truly to pay unto the said plaintiffs the said sum of money, when he, said defendant, should be thereunto afterwards requested.

And whereas also the said defendant afterwards, to wit, on the same day and year last aforesaid, at the place aforesaid, was indebted to the said plaintiffs in the further sum of two hundred dollars, lawful money

8 of the United States of America, for money before that time lent and advanced by said plaintiffs to said defendant, and at the special instance and request of said defendant, and for other money by the said plaintiff' before that time paid, laid out, and expended for the said defendant, and at the like request of the said defendant, and for other money by the said defendant before that time had and received to and for the use of said plaintiffs.

And being so indebted, the said defendant, in consideration thereof, afterwards, to wit, on the same day and year last aforesaid, and at the place aforesaid, undertook then, and there faithfully promised the said plaintiffs well and truly to pay unto the said plaintiffs the said sum of money in this count mentioned, when he should be thereunto afterwards *afterwards* requested.

Nevertheless, said defendant (although often afterwards requested so to do) has not paid said sums of money or any or either of them, or any part thereof to the said plaintiffs, but to pay the same or any part thereof to the said plaintiffs has hitherto refused, and still does refuse, to the damage of said plaintiffs of four hundred thousand dollars, and therefor the said plaintiffs bring suit, &c.

HARTLEY & COLEMAN,
Attorneys for the Plaintiffs.

9 (Endorsed:) 2878. U. S. circuit court. Alphonse Stephani et al. vs. Chester A. Arthur. Declaration. Hartley & Coleman, 51

William street, attorneys for the plaintiffs. To George Bliss, esq., def't att'y. Filed 27, '74.

10 *Plea.*

United States circuit court, southern district of New York.

CHESTER A. ARTHUR
ads.
ALPHONSE STEPHANI & AL.

And the said defendant, Chester A. Arthur, by George Bliss, his attorney, comes and defends the wrong and injury, when, &c., and says that he did not undertake and promise, in manner and form as the said plaintiffs in this suit have above thereof declared against the said defendant, and of this he puts himself upon the country; and the said plaintiffs do the like, &c.

GEORGE BLISS,
Defendant's Attorney.

To HARTLEY & COLEMAN, Esq.,
Plaintiffs' Attorney.

(Indorsed:) 2878. U. S. circuit court. Chester A. Arthur ads. A Stephani & al. Plea. George Bliss, attorney for defendant.

Due service of a copy of the within is hereby admitted.
New York, June 27th, 1874.

You will please take notice, that the plea of the defendant in the above cause, of which the within is a copy, was this day filed in the office of the clerk of the U. S. circuit court for the southern district of New York.
New York, June 27th, 1874.
Yours, &.,

GEORGE BLISS,
Defendant's Attorney.

To HARTLEY & COLEMAN, Esq.,
Plaintiffs' Attorney.

11 *Agreed statement of facts.*

U. S. circuit court, southern district of New York.

ALPHONSE STEPHANI ET AL.
vs.
CHESTER A. ARTHUR.

It is admitted that during the year 1873 plaintiffs were partners unde the firm-name of A. Stephani & Company, & that defendant was co l lector of customs at the port of New York.

The plaintiffs as such firm imported at said port on October 4th, 1873, by the Calabria, from Liverpool, certain chocolate, upon which duty wa exacted by said defendant as such collector at the rate of 50 per cent ad valorem. That the said goods were chocolate in boxes containing each 36 little bricks, each box weighing about half a pound; such bricks being each done up in paper by itself, and being such as is ordinarily

sold by confectioners, was valued at over 30 cents a pound, and is sold by the box or package, & is ordinarily sold as confectionery. Chocolate also comes in other forms.

It is conceded that due protest & appeals have been made on the said importation, claiming that the same was dutiable at chocolate at
12 5 cents per lb. under section 1, act June 6th, 1872, and that the requirement of law relating to the protest, appeal, decision of the Secretary of the Treasury, and bringing suit have been duly complied with.

If judgment be for the plaintiff' it should be for 36.15, the amount exacted by the defendant in excess of 5 per lb. & for costs.

A jury-trial is waived by both parties.

GEORGE BLISS,
Attorney for Def't.
HARTLEY & COLEMAN,
Att'ys for Pl'ffs.

(Endorsed:) U. S. circuit court. Alphonse Stephani et al. vs. Chester A. Arthur. Agreed statement. Filed Feb. 8, 1876. Hartley & Coleman, att'y for pl'ffs.

13 U. S. circuit court.

ALPHONSE STEPHANI ET AL.
vs.
CHESTER A. ARTHUR.

Present, Hon. William J. Wallace.

This cause coming on before me for trial on the 8 day of February, A. D. 1876, during the October term of this court aforesaid, and a jury-trial having been waived and an agreed statement of facts having been made and signed by respective parties hereto by their attorneys, which said waiver of jury-trial and agreed statement of facts are hereto annexed, and having heard on said trial Edward Hartley, of counsel for the plaintiffs, and H. E. Tremain, counsel for the defendant, time having been taken to consider thereof, it is ordered and adjudged that the plaintiffs recover of the defendant thirty-six gold dollars and for their costs .

14 Therefore, it is considered that the said plaintiffs do recover against the said defendant their said debt, and also for their damages which they have sustained, as well on occasion of the detaining of the said debt, as for their costs and charges by them about their suit in this behalf expended, by the said court now here adjudged to the said plaintiffs, and with their assent; which said debt, damages, costs, and charges in the whole amount to .

And the said defendant in mercy, &c.

Judgment signed this day of 187 .

Clerk.

(Indorsed:) U. S. circuit court. Alphonse Stephani et al. vs. Chester A. Arthur. Judgment record. Geo. Bliss, U. S. attorney. Filed Oct. 7, 1876.

15 Supreme Court of the United States, of October term, in the year of our Lord one thousand eight hundred and seventy-six.

CHESTER A. ARTHUR, PLAINTIFF IN ERROR,
ag'st
ALPHONZE STEPHANI & WILLIAM G. MOHRING, defendants in error.

Afterwards, to wit, on the third Monday in said term, before the justices of the Supreme Court of the United States, at the Capitol in the city of Washington, comes the said Chester A. Arthur, by George Bliss, his attorney, and says that in the record and proceedings aforesaid there is error in the several rulings of the court to which exception has been taken, and that by the record aforesaid it appears that judgment aforesaid, in form aforesaid given, was given for the said defendants against the said plaintiff, whereas, by the law of the land, the said judgment ought to have been given for the said plaintiff in error
16 against the said defendants in error, and the said plaintiff prays that the judgment aforesaid, for the errors aforesaid, and other errors in the record and proceedings aforesaid, as the same appear more fully therein, may be reversed, annulled, and altogether held for nothing, and that he, the plaintiff, may be restored to those things which he has lost by reason of said judgment.

GEORGE BLISS,
U. S. Att'y, for Pl'ff in Error.

(Endorsed:) United States Supreme Court. Chester A. Arthur, pl'ff in error, ag'st Alphonze Stephani et al., def'ts in error. Assignment of error. George Bliss, U. S. att'y, for pl'ff in error. Filed Nov. 4, 1876.

17 SOUTHERN DISTRICT OF NEW YORK,
City and County of New York, ss:

John Lenehan, being duly sworn, says that on the 10 day of October, 1870, he served the within citation on Hartley & Coleman, esq's, defendants' attorneys, by leaving a copy thereof with the person in charge of the law office of said Hartley & Coleman, attorneys, No. 51 William street, in said city.

JOHN LENEHAN.

Sworn to before me this 16 day of Oct., 1876.

J. H. FITCH,
Notary Public.

18 UNITED STATES OF AMERICA, *ss:*

To Alphonse Stephani and William G. Moerhing, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington, on the third Monday of October term, eighteen hundred and seventy-six, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the southern district of New York, wherein Chester A. Arthur is plaintiff and you are defendants in error, to show cause, if any there be, why the judgment in the said writ of error mentioned should not be corrected and speedy justice should not be done to the parties in that behalf.

Witness the honorable Morrison R. Waite, Chief Justice of the said Supreme Court of the United States, this eleventh day of October, in the year of our Lord one thousand eight hundred and seventy-six.

ALEX'R S. JOHNSON, *Cir. J.*

(Indorsed :) U. S. Supreme Court. Chester A. Arthur, plaintiff in error, against Alphonse Stephani et als., defendant' in error. Citation.

(Indorsement on cover:) No. 607. Chester A. Arthur, collector of the port of New York, plaintiff in error, vs. Alphonse Stephani and W. G. Moerhing. S. New York C. C. U. S. Filed 7th November, 1876.

In the Supreme Court of the United States.

OCTOBER TERM, 1877.

CHESTER A. ARTHUR, COLLECTOR, &C.,
v.
ALPHONSE STEPHANI AND ANOTHER. } No. 607.

IN ERROR TO THE UNITED STATES CIRCUIT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK.

BRIEF FOR THE PLAINTIFF IN ERROR.

In the Supreme Court of the United States.

OCTOBER TERM, 1877.

CHESTER A. ARTHUR, COLLECTOR, &c.,
v.
ALPHONSE STEPHANI AND ANOTHER. } No. 607.

IN ERROR TO THE UNITED STATES CIRCUIT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK.

BRIEF FOR THE PLAINTIFF IN ERROR.

STATEMENT.

The collector at New York exacted a duty of fifty per cent. ad valorem upon certain chocolate imported by A. Stephani & Co. into that port in 1873, the chocolate being put up in half-pound boxes, each box containing three dozen little "bricks" of the article, every "brick" separately done up in paper. It was valued over thirty cents a pound, is sold by the box or package, usually by confectioners, and as confectionery, and was therefore so assessed, at the rate aforesaid, under act of June 30, 1864, c. 171, §—, imposing it "on all confectionery valued above thirty cents per pound, *or* when sold by the box, package, or otherwise than by the pound." (13 Stats., 202.)

The importers claimed it was liable to but five cents a pound duty as chocolate simply, under the act of June 6, 1872, c. 315, § 1. (13 Stats., 230.)

The cause being submitted to the judge, he found in favor of the original plaintiffs for the difference between these rates.

ASSIGNMENT OF ERROR.

The plaintiff in error assigns for error the ruling of the judge that the article imported was liable to a duty of five cents a pound as chocolate, instead of fifty per cent. ad valorem as confectionery.

BRIEF.

Confectionery may be wholly composed of sugar, or of chocolate; or of a mixture of these or other articles. The term is not indicative of the material used. This importation was of an article not intended to be used as a substitute for coffee, but to be sold and used as a confection. It was so sold and used. It was known to the dealers as confectionery. Therefore it was properly dutiable as such.

EDWIN B. SMITH,
Assistant Attorney-General.

P. F. McBreen, Law and Job Printer, 14 & 16 Ann St., N. Y.

U. S. Supreme Court.

CHESTER A. ARTHUR, *Plaintiff in Error.*	October Term,
vs.	1877.
ALPHONSE STEPHANI, *et al.*	No. 607.

MOTION TO DISMISS.

We move to dismiss this case for want of jurisdiction in this Court to hear it.

Evidence of final judgment must affirmatively appear.

Revised Statutes, section 691.
Keene *v.* Whittaker, 13 Peters, 459.
Dewhurst *v.* Coulthard, 3 Dallas, 409.

The paper purporting to be a judgment record is neither signed by judge or clerk, and that unsigned paper is the only evidence of a trial of the case.

Record, folio 13, 14.

The endorsement shows it was filed by Geo. Bliss, United States Attorney, and not by the party in whose favor it was awarded.

Record, folio 14,

It neither specifies the amount of judgment according to the agreed statement, nor are any costs of plaintiff below taxed therein.

That these omissions were not inadvertent or clerical errors. See clerk's certificate, Appendix A of this brief.

Defendant in error makes this motion to show the Court that it was not by his act or contrivance that a case involving but $36 was brought into this Court, in which no important principle is involved, and while he is willing here, as elsewhere, to defend the question presented by his protest against the rate of duty levied by the Collector he submits that it is a case of extreme hardship, not to say more, to be brought here on so trifling an issue.

BRIEF OF DEFENDANT IN ERROR ON THE MERITS.

What is the duty on "*chocolate*" imported in 1873, such chocolate as is ordinarily sold as confectionery, "*chocolate* in bricks" or squares?

Record, page 4

Defendant in error claims it is dutiable by specific description in Section 1, Act of June 6, 1872, which reads, "On and after the first day of August, 1872, in lieu of the "duties heretofore imposed by law on the articles herein- "after enumerated or provided for imported from foreign "countries, there shall be levied, collected, and paid the "following duties and rates of duty, that is to say * * * "on chocolate five cents per pound."

17 Statutes, 231, (end of section).

Plaintiff in error claims it liable to duty under the sugar clauses of section one, of the Act of June 30, 1864, (13 Statutes, 202, middle,) which read, "On and after the first

"day of July, A. D. 1864, in lieu of the duties heretofore "imposed by law on the articles hereinafter mentioned, "there shall be levied, collected, and paid on goods, "wares, and merchandise herein enumerated and provided "for imported from foreign countries, the following duties "and rates of duty, that is to say * * * on all sugar "not above number 12 * * on all sugar above number "12 * * on all sugar above number 15 * * on all "refined sugar * * * on sugar candy not colored "* * on all other confectionery not otherwise provided "for made wholly or in part of sugar, and on sugars "after being refined when tinctured, colored, or in any "way adulterated, valued at thirty cents per pound or "less, fifteen cents per pound; on all confectionery valued "above thirty cents per pound, or when sold by the box, "package, or otherwise than by the pound, fifty per cent "*ad valorem*."

DEFINITIONS.

Four articles bear on the present inquiry, and since 1842, we find them enumerated as different things in every general tariff, viz.:

1. Chocolate.
2. Comfits or sweetmeats.
3. Sugar-candy.
4. Confectionery (always named in connection with sugars).

Webster defines these articles thus:

CHOCOLATE.—A paste composed of the roasted kernel of the Theobroma cocoa, ground and mixed with other ingredients, usually a little sugar, cinnamon, or vanilla.

COMFIT.—A dry sweetmeat, any kind of fruit or root preserved with sugar and dried.

CANDY.—A preparation of sugar made by boiling and

crystalizing sugar or syrup several times to make it transparent and often flavored with various substances; a conserve confection of sugar.

CONFECTIONERY.—Sweetmeats in general; things prepared and sold by a confectioner; confections, candies.

We add as of more authority the definitions in McElrath's Commercial Dictionary. Mr. McElrath, for some years Appraiser at the port of New York, compiled his work from the designations of goods in our markets:

CHOCOLATE CAKE.—Pulverized and prepared cocoa beans, flavored with sugar and other ingredients used as a beverage, and in confectionery.

COMFIT.—A dry sweetmeat, seeds crusted or coated with sugar.

CONFECTIONERY.—The trade name for preparations of fruit with sugar and various preparations of sugar in different and fancy forms, sweetmeats, &c.

These definitions show first, that one of the two uses of chocolate is in confectionery, and that comfits and candy come within the common meaning of the term "confectionery," and second, that by McElrath's definition, confectionery as a *trade term* is confined to articles made of sugar as the prominent ingredient.

Argument.

I.

Tariff acts are all in *pari materia*, and parts of an existing system and must be construed together.

Stuart *v.* Maxwell, 16, Howard, 160, near top.
Pennington *v.* Coxe, 2, Cranch, 52, bottom, 58, near top.
United States *v.* Collier, 3, Blatchford, 332, 333.

"Where acts are in *pari materia*, if the same word be used in both statutes, a distinction made in the one is a legislative exposition of the sense in which it is to be understood in the other."

Dwarris on Stats., p. 701, 765, 766.

II.

"Chocolate" has been in the Tariff *eo nomine* and without limitation since 1792.

Act May 2, 1792, (1 Stats. 259, middle.)

"Chocolate per pound three cents."

Act April 27, 1816, (3 Stats. 311, near bottom.)

"Chocolate three cents per pound."

Act May 22, 1824, (4 Stats. 28, below middle.)

"Chocolate four cents per pound."

For the later enumerations closing with the Revision of the Statutes—see citations under Point VI.

III.

"Confectionery" was first named in the Tariff in 1842, and "chocolate" had then from a long course of legislation acquired a distinct and settled Tariff meaning which could not be disturbed by the general term "confectionery" then introduced for the first time into the statute, in which

same statute "chocolate" was separately provided for by name.

Act of August 30, 1842, (5 Statutes 558, top to middle.)

The text of this law is given under Point VI.

"It is not to be presumed that Congress when it substitutes the provisions of one (revenue) act for another, intends to use terms in a sense different from that which had been used in prior acts. If Congress did so intend, it must be shown."

Roosevelt *v.* Maxwell, 3, Blatch, 391, 395.

IV.

The term "confectionery" has by a long course of legislation acquired for revenue purposes a restricted meaning, exclusive even of "sugar-candy," "comfits" and "sweetmeats," known articles of confectionery, because they are provided for by name in the same acts with confectionery and at different rates of duty, and because they were in the Tariff fifty years before confectionery was named.

Act August 10, 1790, 1 Stats. 181, near top.—"Sugar-candy," all fruits and "comfits."

See enumerations given in the laws under Point VI.

"An article having been identified by a given destination for revenue purposes distinct from the general class to which it might otherwise be assigned, it must be treated as a distinct article whether there be evidence that it is so known in commerce or not."

De Forest *et al*, *v.* Lawrence 13, Howard, 274, 282.
Elliott *v.* Swartout, 10 Peters, 137, 152.

V.

In every general Tariff act from 1842 to date, "chocolate" has been contrasted with "confectionery," "comfits," "sugar-candy" and "sweetmeats," these articles being separately named in every general Tariff act as different things from chocolate, and at different rates of duty; hence chocolate cannot for duty purposes be included in any one of those terms.

See laws cited under Point VI.

Reiche *v.* Smythe, 13 Wallace, 162.
Homer *v.* The Collector, 1 Wallace, 486.
Roosevelt *v.* Maxwell, 3 Blatch, 391.
De Forest *v.* Lawrence, 13 Howard, 281, 282.
Movius *v.* Arthur (decided at this term, No. 82).

VI.

"Confectionery" has always been placed in the Tariff in sugar sections and among sugars, and thereby has by association acquired a peculiar meaning, different from and exclusive of "chocolate" which has been classed for duty among miscellaneous articles.

General Tariff of 1842, 5 Stats., 558.

Here the term "confectionery" appears for the first time. In sec. 8, ¶ 1, sugars, raw, brown, clayed, refined, lump, loaf, crushed, pulverized, tinctured and colored, also syrups and molasses, and "comfits, sweetmeats, or fruits preserved in molasses, sugar or brandy, and confectionery of all kinds not otherwise specified, 25 per cent. *ad valorem*," are all provided for in one paragraph. In ¶ 2, "chocolate four cents per pound is separately provided for among miscellaneous articles.

General Tariff of 1846, 9th Stats., 44.

Here articles are arranged alphabetically in schedules. In Schedule B at 40 per cent. we find "comfits, sweetmeats, or fruit preserved in sugar, brandy or molasses."

9th Stats., 44, middle.

In Schedule C at 30 per cent. we find "confectionery of all kinds" &c., page 45, near top, and "sugar of all kinds," page 46, near top.

In Schedule E at 20 per cent., "chocolate," p. 47, near top.

General Tariff of March 2, 1861, 12th Stats., p. 180, near top.

In sec. 5, ¶ 1, we find among the *sugars* "sugar candy four cents per pound," and at the close of the subdivision "confectionery of all kinds not otherwise provided for, thirty per cent."

In sec. 22, are "comfits, sweetmeats or fruit preserved in sugar, brandy or molasses at 30 per cent.," page 191, near bottom.

In sec. 20, we find "chocolate," at 20 per cent., page 189, middle.

The partial Tariff act of August 5, 1861, advanced "sugar candy" to six cents per pound, and "chocolate" to six cents per pound.

12th Stats., 292.

The amendatory tariff of Dec. 24, 1861, advanced "sugar candy" to eight cents per pound.

12th Stats., 330.

The supplemental Tariff act of July 14, 1862, in sec. 1, among the sugars, imposed "on sugar candy not colored "six cents per pound, and all other confectionery made "wholly or in part of sugar and on sugars after being

"refined, when tinctured, colored or in way adulterated, "ten cents per pound."

12th Stats., 554, near top.

Section 7 puts an additional duty on "chocolate" of one cent per pound.

12th Stats., 550, below middle.

Section 13 puts 5 per cent. additional duty on "comfits, sweetmeats or fruits preserved in sugar, brandy or molasses."

12th Stats., 556, middle.

Tariff act of June, 30, 1864. 13th Stats, 202, middle.

In the *sugar* sub-division of sec. 1, we find "sugar "candy not colored ten cents per pound; on all other con- "fectionery not otherwise provided for made wholly or in "part of sugar, and on sugars after being refined when "tinctured, colored or in any way adulterated valued at "thirty cents per pound or less fifteen cents per pound, on "all confectionery valued above thirty cents per pound or "when sold. by the box, package or otherwise than by "the pound 35 per cent. *ad valorem*."

Act of July 14, 1870. 16th Stats., 262, above middle.

Section 21 imposes on chocolate seven cents per pound.

Act of June 6, 1872.

Section 1 imposes on chocolate five cents per pound.
17 Stats., 241, end of section.

The revision of the Statutes fairly presents the state of the law at the time of this importation on the articles in controversy.

In Schedule G, entitled "SUGARS," "sugar candy," and "confectionery" are provided for as in the Act of 1864.

Rev. Stats., p. 472.

In Schedule M, entitled "SUNDRIES," are "comfits, "sweetmeats or fruits preserved in sugar, brandy or "molasses."

Revised Stats., p. 478, middle.

In the same schedule "chocolate five cents per pound.

Revised Stats., p. 478, near top.

To show further the intention of the lawmakers to confine "confectionery" to confectionery made of sugar, the Internal Revenue Acts imposing taxes thereon not only state that the confectionery named is *sugar confectionery*, but contrast it with "chocolate" named eo nomine in the same Acts.

Act of July 1, 1862, 12 Stats., 463 (below middle), imposes on "sugar candy and all confectionery made wholly or "in part of sugar one cent per pound"—"On chocolate "and cocoa prepared one cent per pound."

Act March 3, 1863, 12 Stats., 717 (below middle), imposes "on sugar candy and all confectionery made wholly or in "part of sugar valued at 14 cents per pound or less 2 cents "per pound, when valued at exceeding 14 cents and not "exceeding 40 cents per pound, 3 cents per pound; when "valued at exceeding 40 cents per pound, or when sold "otherwise than by the pound, five per centum *ad val-* "*orem*."

Act June 30, 1864, 12 Stats., 266 (near top), imposes on "sugar candy and all confectionery made wholly or in

"part of sugar valued at not exceeding 20 cents per pound, "duty of 2 cents per pound, exceeding 20 and not exceed- "ing 40 cents per pound, a duty of four cents per pound, "and when exceeding 40 cents per pound, *or sold by the "box, package, or otherwise than by the pound*, a duty of "ten per cent. *ad valorem*.

"On chocolate and cocoa prepared a duty of one and a "half cents per pound."

The italicised words in this act are also used in the Tariff Act of June 30, 1864, before cited, passed on the same day. These words were never used before in connection with confectionery in any revenue act, and show not only a common origin, but a design that "confectionery" should be classified in the same way in the Custom and Internal Revenue acts.

Therefore, the term "confectionery," in the laws above cited is restricted to confectionery of sugar, conformably to the maxim of "*noscitur a sociis*."

> "Where several words preceding a general word "point to a confined meaning, the general word shall "not have such a meaning as to extend its effect "beyond subjects *ejusdem generis*."

Chitty on Contracts, 90.
Sedgwick Stat. & Cons. Laws, p. 423.
Sandiman *v.* Breach, 7 B. & C., 96.
Casper *v.* Holmes, 2 B. & Ad., 592.
Chegary *v.* The Mayor, 3 Kernan, 220, 229.
Adams *v.* Bancroft, 3 Sumner, 384, 386.
U. S. *v.* 24 Cails Cordage, 1 Baldwin, 502, 506.
U. S. *v.* Weise, 2 Wallace, Jr., 72, 77.
Bend *v.* Hoyt, 13 Peters, 271, 272.
Reiche *v.* Smythe, 13 Wallace, 163.

It is clear from the resume of the Statutes (a.), that chocolate has been since 1792 *continuously* dutiable as "chocolate," without restriction, (b.), that "sugar candy, comfits and sweetmeats," and "confectionery" have alike been dutiable all since 1842 as separate articles, not only from "chocolate," but each other, and (c.), that confectionery and sugar candy have always been dutiable with sugars and as made of sugar.

Either of these facts should affirm the judgment.

In Reiche *v* Smythe the Court held that "birds" were not included in the term "animals" for tariff purposes, although the distinction beween them was only made in one statute where they appeared in the same section which was the free list.

Here the distinctions run through twenty statutes ever since 1795, from nearly the first tariff act to the last.

So we quote again as decisive and exactly in point.

Deforest *v* Lawrence, 13 Howard, 28, bottom and 282.
Homer *v* The Collector, 1 Wallace, 486.
Reiche *v* Smythe, 13 Wallace, 162.
Movius *v* Arthur, decided at this term, No. 82.
Boving *v* Lawrence 1, Blatch 607.

EDWARD HARTLEY,
Counsel for Defendants in Error.

Appendix A.

CIRCUIT COURT OF THE UNITED STATES.

SOUTHERN DISTRICT OF NEW YORK.

ALPHONSE STEPHANI and W. G. MOERHING

vs.

CHESTER A. ARTHUR.

I, John I. Davenport, Clerk of the Circuit Court of the United States for the Southern District of New York, do hereby certify that on the 7th day of October, A. D. 1876, the attorney for the defendant presented to me what purported to be a judgment roll in said action with a request that I sign the same and enter judgment thereupon, which request was then and there refused.

The said paper purporting to be such judgment roll was then and there by said attorney for defendant filed in my office.

I further certify that on the 11th day of October, A. D. 1876, a said writ of error and citation was filed in my office.

I further certify that in obedience to said writ of error, I did on the 6th day of November, A. D. 1876, transmit my return on said writ to the Supreme Court of the United States.

In testimony whereof I have hereunto subscribed my name and affixed the seal of said Circuit Court this sixteenth day of March, A. D., 1878.

[SEAL].

JOHN I. DAVENPORT,
Clerk.

Chocolate

Confectionary